

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1218 OF 2018

Appaso @ Kumar Kallappa Kumasage ... Applicant

Versus

State of Maharashtra and Anr. ... Respondents

Adv Priyal Sarda for the Applicant.

Smt. S.D. Shinde, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
N.M. JAMDAR, JJ.**

DATE : FEBRUARY 11, 2019

P.C.:

Heard learned counsel for the Applicant. He challenges the chargesheet to the extent of section 201 of IPC. The offences are under section 302 and 34 and 201 of IPC.

2. The contention is material on record does not show presence of the petitioner at the spot or his involvement in the alleged incident or then fact of his being party thereto in any manner. It is urged that to attract section 201 of IPC, *mens rea* is an essential ingredient and support is being taken from 1995 Supp (4) SCC 416 in the case of Arbind Singh Vs. State of Bihar. We find that the petitioner is not seeking quashment in so far as section 302 or

34 of IPC is concerned. According to petitioner only a co accused alleges that on telephone the petitioner instructed him to keep the dead body outside the hotel.

3. The correctness or otherwise of these averments cannot be gone into at this stage.

4. As the offence under section 201 is alleged to be made out along with other offences, in this situation, we are not inclined to intervene in extra ordinary jurisdiction. We keep all contentions of the petitioner open and with a liberty to the petitioner to raise the same at appropriate juncture, dispose of the present matter.

(N.M. JAMDAR, J.)

(B.P. DHARMADHIKARI, J.)